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Supreme Court, U.S.
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No. 02-695

In The
Supreme Court of the United States

MICHAEL FITZGERALD,
Treasurer, State of Iowa,

Petitioner,

v.

RACING ASSOCIATION OF CENTRAL IOWA,
IOWA GREYHOUND ASSOCIATION,
DUBUQUE RACING ASSOCIATION, LTD. and
IOWA WEST RACING ASSOCIATION,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Iowa

REPLY BRIEF FOR THE PETITIONER

THOMAS J. MILLER
Attorney General of Iowa

JULIE F. POTTORFF*
Deputy Attorney General

JEFFREY D. FARRELL
JEAN M. DAVIS
Assistant Attorneys General
Hoover State Office Building
Des Moines, IA 50319
(515) 281-5165

Attorneys for Petitioners
**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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SUMMARY OF REPLY ARGUMENT

Respondents' opposition to certiorari confuses the issues before this Court by relying on two false premises: 1) that the sole legislative purpose for enacting a statute authorizing slot machines at racetracks precludes any conceivable rational basis for creating a differential tax rate for racetracks and riverboats; and 2) that an Equal Protection decision by the Iowa Supreme Court based on independent state grounds issued more than twenty years ago precludes jurisdiction in this case.

Respondents and the narrow majority of the Iowa Supreme Court rejected rational bases which would sustain the Iowa statute based on flawed logic: that a statute enacted to help racetracks recover financially could not rationally include a tax differential between racetracks and riverboats on gambling receipts from slot machines. Respondents are better off with slot revenue taxed at a higher rate than with no slot revenue at all. Their misguided reliance on the subjective motive of a single legislator to attack the tax differential only amplifies the error in reasoning. Deducing the legislative purpose of a statute from the remarks of a single legislator is improper.

Respondents' contention that the decision is based on adequate and independent state grounds similarly flows from flawed logic. An Iowa Supreme Court decision issued more than twenty years ago based on adequate and independent state grounds did not preclude jurisdiction in this case. Indeed, Iowa's high court reiterated just today that the Equal Protection Clauses of the United States and Iowa Constitutions are "deemed to be the same 'in scope, import and purpose.'" *Johnson v. Louis*, ___ N.W.2d ___ (Iowa Dec. 18, 2002); *see also Master Builders of Iowa, Inc. v. Polk*

County, 653 N.W.2d 382, 398 (Iowa 2002). Although in *Bierkamp v. Rogers*, 293 N.W.2d 577 (Iowa 1980), the Iowa Supreme Court decided issues under the state Equal Protection Clause differently from the federal analog, the Court in *Bierkamp* took pains to explain the express departure from federal precedent. *Id.* at 579. Nothing in *Bierkamp* precluded the Iowa Supreme Court, twenty-two years later, from deciding federal and state Equal Protection issues under the same analytic framework.

The decision below conflicts with federal constitutional law and should be reversed.

I. RESPONDENTS CONFUSE LEGISLATIVE INTENT IN ENACTING A STATUTE WITH A RATIONAL BASIS FOR CREATING A TAX DIFFERENTIAL ON GAMBLING RECEIPTS FROM RACETRACKS AND RIVERBOATS.

Respondents' brief in opposition claims an anomaly where none exists. Respondents and a narrow majority of the Iowa Supreme Court take the position that a statute enacted with the legislative intent to help the racetrack industry financially could not on any conceivable rational basis impose a higher tax rate on slot machines at racetracks than on casino games on riverboats. This logic is flawed because a rational legislature could have determined that racetracks would benefit by slot machines, even at a higher tax rate.

This flawed logic underscores the conflict between the Iowa Supreme Court decision and federal precedent on Equal Protection issues. Equal Protection cases are not about construing legislative intent in enacting a statute,

but about searching for any conceivable rational basis to support a legislative classification.

Rather than engaging in "rational speculation" to search for justifications to *uphold* the legislative classification, as required by *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993), the majority opinion speculated to find a single purpose for the legislation the court deemed irrational and thereafter disregarded multiple conceivable reasons supporting the tax rate classifications. *See* Pet. App. at 18 (Neuman, J., dissenting).

Respondents' brief in opposition carries this flawed logic forward by relying heavily on the actions of a single legislator to suggest that the legislation was motivated by an improper legislative purpose to harm Respondents. *See* Opposition Brief at 5-7, 14. To derive the legislative purpose of a statute from the words or actions of a single legislator is improper under federal as well as Iowa law. *See Bread Political Action Comm'n v. Fed. Election Comm'n*, 455 U.S. 577, 581 n.3 (1982) (refusing to give weight to affidavits of senator regarding the meaning of statutory language); *Donnelly v. Bd. of Trs. of Fire Ret. Sys. of City of Des Moines*, 403 N.W.2d 768, 771 (Iowa 1987) ("We must look at what the legislature said, rather than what it should or might have said. . . . As we have stated in previous cases, we will not consider a legislator's own interpretation of the language or purpose of a statute. . . ."); *Ruthven Consol. Sch. Dist. v. Emmetsburg Cmty. Sch. Dist.*, 382 N.W.2d 136, 138 (Iowa 1986) (stating "In common with most states we will not consider a legislator's private interpretation of a statute, even if the legislator was actively involved in drafting and enacting the legislation.").

Had the Iowa Supreme Court recognized the legislative purpose of enacting the statute authorizing slot machines at racetracks as providing financial assistance to an ailing industry and not been wrongly focused on the personal motive of an individual legislator, the analytic route to a rational basis for the tax differential would have been apparent. Authorizing slot machines at racetracks gave Respondents a new source of revenue, a virtual goldmine that substantially improved the financial status of the racetracks. This was a bold economic move to help the racetracks. Louisiana is the only state apart from Iowa that has legalized slot machine gaming at both racetracks and riverboat casinos. Iowa Code § 99F.11; La. Rev. Ann. Stat. §§ 27:91, 27:393 (West 2001).

But authorizing this new source of revenue did not constitutionally obligate the State to tax the gambling receipts from the slot machines at racetracks at the same rate as the State taxed the gambling receipts from casino games on riverboats. Expanding gambling to assist the racetracks did not foreclose all rational reasons for taxing the riverboats at a lower rate. The district court wisely found at least three conceivable rational bases for taxing the riverboats at a lower rate: 1) promoting development of river communities; 2) promoting riverboat history; and 3) promoting riverboat casinos as a useful industry. Brief of Petitioners at 9. Only one reason would have been sufficient to satisfy Equal Protection.

The differential tax rate in the Iowa statute is based not simply on the physical location of the gaming device, but also on the class of business providing it, and there is nothing unconstitutional about taxing different classes of businesses with different cost structures at different rates.

II. RESPONDENTS' RELIANCE ON ISOLATED IOWA SUPREME COURT PRECEDENT DOES NOT UNDERMINE JURISDICTION OF THE UNITED STATES SUPREME COURT.

Respondents attempt to parlay the Iowa Supreme Court's decision in *Bierkamp* to thwart federal jurisdiction in this Petition for Certiorari. On the rare occasions when the Court has departed from federal precedent in construing the state constitution, the Court has taken pains to explain why. *See, e.g., Bierkamp,* 293 N.W.2d at 579.

In sharp contrast, the decision below embarked on no separate analysis of the equal protection claims under state and federal law. Rather, the Court applied the same analysis to both as it had in every other Iowa equal protection decision cited therein. To the contrary, the Court expressly stated that the "same analysis" applied to both state and federal equal protection claims. Pet. App. at 6. This Court has not hesitated to review and reverse an erroneous state supreme court equal protection ruling expressly decided under both the federal and state constitutions, when, as here, the state court applies the same analysis to both. *Cent. State Univ. v. Am. Ass'n of Univ. Professors*, 526 U.S. 124 (1999).

The majority cites *Bierkamp* only once, in a passing reference to a general proposition of equal protection law, and without noting *Bierkamp* was decided under the state constitution. Moreover, every other Iowa decision relied upon by the majority expressly adjudicated federal equal protection claims. The absence of any *Bierkamp*-style separate analysis in the decision below confirms that the majority meant what it said in stating the "same analysis"

applied to Respondents' federal and state equal protection claims.

Accordingly, the inescapable conclusion is that the decision below – like that of the Ohio Supreme Court in *American Ass'n of Univ. Professors* – was based on an erroneous holding of federal law, reversal of which necessarily reverses the state constitutional adjudication based on the same analysis.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted and the decision of the Iowa Supreme Court reversed.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

JULIE F. POTTORFF*
Deputy Attorney General

JEFFREY D. FARRELL
JEAN M. DAVIS
Assistant Attorneys General
Hoover State Office Building
Des Moines, IA 50319
(515) 281-5165

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**Counsel of Record*